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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,652	11/26/2001	Daniel C. Shaw	6278.244a	4497

7590

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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,652

Applicant(s)

SHAW ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27,30,31,33,36-45,48 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27,30,31,33,36-45,48 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "providing" step set forth in claim 48 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 27, 30, 33 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaw '758.

The Shaw '758 (Shaw) reference discloses a control system comprising: a plurality of fixtures T,S,U; a source of water 20; a plurality of valves 24; a plurality of sensors D; and a microprocessor 34,44, as claimed. Re claim 48, recitation of "prison" in the preamble thereof is considered merely a label where the balance of the claim otherwise defines only a plumbing/water control system. Moreover, the noted elements of Shaw are considered to be "provided". Note claim 16 in Shaw, for example.

Applicant's argue at pages 8-9 of the response filed March 2, 2004 Shaw is not prior art to the instant application. The examiner can not agree. The instant application is a continuation-in-part (via 07/822,201 filed January 17, 1992) of the Shaw patent. Furthermore, the inventors of patent 6,336,233 (application 09/277,872) are listed thereon as Shaw et al. Indeed, the instant application has a different inventive entity than that of Shaw. See MPEP 706.02(a)II.

4. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw.

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The choice of sensor type would appear an obvious choice to be made as taught by Shaw at column 4, lines 50-52. And, a capacitance sensor is one of the many well known sensor types. Applicant's have not separately argued this grounds of rejection.

5. Claims 27, 30, 31, 33, 36, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Atkins et al. and Evelyn-Veere et al.

The Robertshaw reference discloses a control system comprising: a plurality of plumbing fixture S; a source of water T; a valve SV; a sensor DS (col. 1 lns. 38-40); and a time-delaying D1 controller CB, as claimed. The Robertshaw controller is a "microprocessor" as it include a timing chip 10 (col. 3 lns. 32-40), and the term "microprocessor" connotes no distinguishing structure thereover. Furthermore, the controller is both adjustable (col. 2 lns. 33-35 and 40-43), and "remote" from the fixture (Fig. 1). The recitation of "prison" in the preambles of claims 27 and 48 is considered merely a label where the balance of the claims otherwise define only a plumbing/water control system. Re claim 36, Robertshaw teaches adjusting the delay to desired requirements (col. 3 lns. 27-28) where the choice of particular delay would appear an obvious choice to be made. Re claim 48, the noted elements of Robertshaw are

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considered to be "provided" in the same sense as with the elements of applicants' invention. Therefore, Robertshaw teaches all elements set forth in claims 27, 30, 36, 48 and 49 except for the provision of associating a valve and sensor with individual fixtures.

Although the Robertshaw water control system does not include associating a valve and sensor with individual fixtures, as claimed, attention is directed to the Atkins et al. (Atkins) reference which discloses an analogous water control system which further includes associating a valve 14 and sensor 36 with individual fixtures 10 (col. 1 lns. 29-42). Therefore, in consideration of Atkins, it would have been obvious to one of ordinary skill in the art to associate a valve and sensor with individual fixtures of the Robertshaw water control system in order to prevent wasting of water.

Applicant's argue at page 9 of the response Robertshaw discloses a "cistern flushing system". The examiner can not agree as no cistern is illustrated in Robertshaw. Applicant's further argue at page 9 of the response Robertshaw only discloses associating a sensor with a plurality of fixtures. The examiner can not agree and notes Robertshaw discloses at lines 29-34 of column 1 a source of water, a flush control valve (switch/sensor operated) and a delay circuit. Applicant's

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further yet argue at page 9 of the response Robertshaw fails to disclose both determining which sensor out of a plurality of sensors is requesting operation, and delaying operation of a particular fixture out of a plurality of fixtures. The examiner does not necessarily disagree, but notes Atkins teaches a plurality of fixtures (col. 1 lns. 16-28) and a sensor associated with one of the fixtures (col. 1 lns. 50-69). The artisan obviously would consider combining this disclosure in Atkins with the disclosure in Robertshaw in achieving the common goal set forth in both disclosures of conserving water, contrary to applicant's argument at pages 10-11 of the response.

Re claim 31, although the Robertshaw sensor is not a capacitance sensor, as claimed, attention is again directed to Atkins which discloses use of a capacitance sensor. Therefore, in further consideration of Atkins, it would have been obvious to one of ordinary skill in the art to associate a capacitance sensor with the Robertshaw water control system in order to utilize a user's body capacity.

Re claim 33, Atkins still further teaches locating a controller 18 proximate the valve 14.

Re claim 27, to the extent the timing chip controller disclosed in Robertshaw can not be termed a "microprocessor", attention is directed to the Evelyn-Veere et al. (Evelyn-Veere)

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reference which teaches at lines 56-61 in column 5 it is a matter of choice to implement a controller either as a microprocessor or as hard-wired. Applicant's argue at page 10 of the response the Evelyn-Veere controller is not "selectable and adjustable". The examiner can not agree, and notes such appears to amount to an inherent function of a microprocessor. In any event, the Robertshaw controller is disclosed as being "selectable and adjustable" as discussed supra. Applicant's further argue at page 10 of the response Atkins fails to disclose delaying operation (of a valve) for a adjustable period of time after actuation of a sensor. The examiner can not agree, and notes Atkins discloses an adjustable (col. 2 lns. 59-61) delay period (claim 1 clause (d)).

6. Claims 27, 30, 31, 33, 36-39, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Atkins and Evelyn-Veere as applied to claim 27 above, and further in view of Morris et al.

Although the Robertshaw water control system does not include a plurality of indicators, as claimed, attention is directed to the Morris et al. (Morris) reference which discloses an analogous water control system which further includes a plurality of indicators (col. 8 lns. 17-35). Therefore, in consideration of Morris, it would have been obvious to one of

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ordinary skill in the art to associate a plurality of indicators with the Robertshaw water control system in order to facilitate use in a prison. Applicant has not separately argued this grounds of rejection.

7. Claims 40-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robertshaw, Atkins, Evelyn-Veere and Morris as applied to claim 37 above, and further in view of Book.

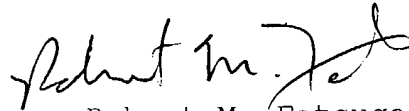
Although the Robertshaw water control system does not include a plurality of switches and a master switch, as claimed, attention is directed to the Book reference which discloses an analogous water control system which further includes a plurality of switches (col. 11 lns. 2-3) and a master switch 149. Therefore, in consideration of Book, it would have been obvious to one of ordinary skill in the art to associate a plurality of switches and a master switch with the Robertshaw water control system in order to facilitate user control. Applicant's have not separately argued this grounds of rejection.

8. Applicant's remarks have been fully considered and have been previously addressed.

9. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

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10. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.

A handwritten signature in dark ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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